

RIGHT TO SILENCE

Salinas v. Texas, --- U.S. --- (2013)
Decided June 17, 2013

FACTS: On December 18, 1992, two brothers were murdered in their Houston home. A neighbor heard the gunshots and saw someone race away in a dark vehicle. Six shotgun shell cases were recovered at the scene. The investigation led to Salinas, who had been a guest at a party at the home the night before. They visited Salinas, seeing a dark blue vehicle at the home. He handed over his shotgun for testing and accompanied the police to the station.

All parties later agreed that the interview was non-custodial and that he was not given Miranda warnings. He answered most of the questions posed, but when asked if his shotgun would match the recovered shells, he “declined to answer.” Instead, he “looked down at the floor, shuffled his feet, bit the bottom lip, clenched his hands in his lap, [and] began to tighten up.” A few moments of silence passed and the interviewing officer moved on to additional questions, which Salinas answered.

Salinas was arrested on outstanding traffic warrants, but without more information, the police elected not to charge him on the murder. A few days later, with information that a witness had heard Salinas confess to the crime, they decided to charge him. By that time, however, he had absconded. He was located in 2007, in the Houston area, using an assumed name, and arrested.

Salinas did not testify at trial. Instead, and over his objection, the prosecution was permitted to introduce his reaction to the officer’s question about the shotgun. Salinas was convicted. On appeal in the Texas state courts, Salinas argued that the use of his silence violated the Fifth Amendment, but the appellate Texas courts both ruled that his “prearrest, pre-Miranda silence was not ‘compelled’ within the meaning of the Fifth Amendment.”

Salinas requested certiorari, and the U.S. Supreme Court granted review.

FACTS: Is simply failing to answer a question during a noncustodial interview an invocation of the right to silence?

HOLDING: No

DISCUSSION: The Court noted that Salinas’ interview with the police was voluntary. He “agreed to accompany the officers to the station and ‘was free to leave at any time during the interview.’” In this case, the “critical question” was whether he was somehow “deprived of the ability to voluntarily invoke the Fifth Amendment.” At no point during that interview did he make any attempt to actually invoke his right to refuse to answer the question, he simply did not answer.

The Court agreed that prior case law established that “a defendant normally does not invoke the privilege by remaining silent” or “standing mute.”¹ The Court had held repeatedly that “the express invocation requirement applies even when an official has reason to suspect that the answer to his question would incriminate the witness.” The Court looked to the most recent case, Berghuis v. Thompkins, with its post-Miranda “extended custodial silence” which was held not to have invoked the privilege, and agreed that if that did not do so, then “surely the momentary silence in this case did not do so either.”² Although Salinas attempted to distinguish it “by observing that it did not concern the admissibility of the defendant’s silence but instead involved the admissibility of his subsequent statements,” but the Court disagreed, ruling that “a suspect who stands mute has not done enough to put police on notice that he is relying on his Fifth Amendment privilege.” The Court noted that not every “possible explanation for silence is probative of guilt,” but instead could be related to embarrassment or another reason. The Court noted, as well, that he “did not merely remain silence; he made movements that suggested surprise and anxiety,” effectively turning silence into “expressive conduct.”

The Court concluded that before one might “rely on the privilege against self-incrimination; he was required to invoke it.” Since Salinas did not, he could not.

The Court upheld the decision of the Texas Court of Criminal Appeals and affirmed Salinas’ conviction.

Full Text of Opinion: http://www.supremecourt.gov/opinions/12pdf/12-246_1p24.pdf.

¹ Minnesota v. Murphy, 465 U.S. 420 (1984); Roberts v. U.S., 445 U.S. 552 (1980); U.S. v. Sullivan, 274 U.S. 259 (1927).

² 560 U.S. 370 (2010).